

FIRST REGULAR SESSION

HOUSE BILL NO. 1027

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROORDA.

2230L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 211.059, 211.061, and 211.063, RSMo, and to enact in lieu thereof four new sections relating to investigation of third-party involvement in certain juvenile offenses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 211.059, 211.061, and 211.063, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 211.059, 211.061, 211.063, and
3 211.065, to read as follows:

211.059. 1. **Except as provided in section 211.065**, when a child is taken into custody
2 by a juvenile officer or law enforcement official, with or without a warrant for an offense in
3 violation of the juvenile code or the general law which would place the child under the
4 jurisdiction of the juvenile court pursuant to subdivision (2) or (3) of subsection 1 of section
5 211.031, the child shall be advised prior to questioning:

6 (1) That he has the right to remain silent; and

7 (2) That any statement he does make to anyone can be and may be used against him; and

8 (3) That he has a right to have a parent, guardian or custodian present during
9 questioning; and

10 (4) That he has a right to consult with an attorney and that one will be appointed and paid
11 for him if he cannot afford one.

12 2. If the child indicates in any manner and at any stage of questioning pursuant to this
13 section that he does not wish to be questioned further, the officer shall cease questioning.

14 3. When a child is taken into custody by a juvenile officer or law enforcement official
15 which places the child under the jurisdiction of the juvenile court under subdivision (1) of

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 subsection 1 of section 211.031, including any interactions with the child by the children's
17 division, the following shall apply:

18 (1) If the child indicates in any manner at any stage during questioning involving the
19 alleged abuse and neglect that the child does not wish to be questioned any further on the
20 allegations, or that the child wishes to have his or her parent, legal guardian, or custodian if such
21 parent, guardian, or custodian is not the alleged perpetrator, or his or her attorney present during
22 questioning as to the alleged abuse, the questioning of the child shall cease on the alleged abuse
23 and neglect until such a time that the child does not object to talking about the alleged abuse and
24 neglect unless the interviewer has reason to believe that the parent, legal guardian, or custodian
25 is acting to protect the alleged perpetrator. Nothing in this subdivision shall be construed to
26 prevent the asking of any questions necessary for the care, treatment, or placement of a child; and

27 (2) Notwithstanding any prohibition of hearsay evidence, all video or audio recordings
28 of any meetings, interviews, or interrogations of a child shall be presumed admissible as
29 evidence in any court or administrative proceeding involving the child if the following conditions
30 are met:

31 (a) Such meetings, interviews, or interrogations of the child are conducted by the state
32 prior to or after the child is taken into the custody of the state; and

33 (b) Such video or audio recordings were made prior to the adjudication hearing in the
34 case. Nothing in this paragraph shall be construed to prohibit the videotaping or audiotaping of
35 any such meetings, interviews, or interrogations of a child after the adjudication hearing; and

36 (3) Only upon a showing by clear and convincing evidence that such a video or audio
37 recording lacks sufficient indicia of reliability shall such recording be inadmissible.

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39 The provisions of this subsection shall not apply to statements admissible under section 491.075
40 or 492.304 in criminal proceedings.

211.061. 1. When a child is taken into custody with or without warrant for an offense,
2 the child, together with any information concerning the child and the personal property found in
3 the child's possession, shall be taken immediately and directly before the juvenile court or
4 delivered to the juvenile officer or person acting for him.

5 2. If any person is taken before a circuit or associate circuit judge not assigned to
6 juvenile court or a municipal judge, and it is then, or at any time thereafter, ascertained that he
7 or she was under the age of seventeen years at the time he or she is alleged to have committed
8 the offense, or that he or she is subject to the jurisdiction of the juvenile court as provided by this
9 chapter, it is the duty of the judge forthwith to transfer the case or refer the matter to the juvenile
10 court, and direct the delivery of such person, together with information concerning him or her

11 and the personal property found in his or her possession, to the juvenile officer or person acting
12 as such.

13 3. **Except as provided in section 211.065**, when the juvenile court is informed that a
14 child is in detention it shall examine the reasons therefor and shall immediately:

15 (1) Order the child released; or

16 (2) Order the child continued in detention until a detention hearing is held. An order to
17 continue the child in detention shall only be entered upon the filing of a petition or motion to
18 modify and a determination by the court that probable cause exists to believe that the child has
19 committed acts specified in the petition or motion that bring the child within the jurisdiction of
20 the court under subdivision (2) or (3) of subsection 1 of section 211.031.

21 4. **Except as provided in section 211.065**, a juvenile shall not remain in detention for
22 a period greater than twenty-four hours unless the court orders a detention hearing. If such
23 hearing is not held within three days, excluding Saturdays, Sundays and legal holidays, the
24 juvenile shall be released from detention unless the court for good cause orders the hearing
25 continued. The detention hearing shall be held within the judicial circuit at a date, time and place
26 convenient to the court. Notice of the date, time and place of a detention hearing, and of the right
27 to counsel, shall be given to the juvenile and his or her custodian in person, by telephone, or by
28 such other expeditious method as is available.

211.063. 1. **Except as provided in section 211.065**, a child accused of violating the
2 provisions of subdivision (2) of subsection 1 of section 211.031 shall not be held in a secure
3 detention placement for a period greater than twenty-four hours, excluding Saturdays, Sundays
4 and legal holidays, unless the court finds pursuant to a probable cause hearing held within that
5 twenty-four-hour period, that the child has violated the conditions of a valid court order and that:

6 (1) The child has a record of willful failure to appear at juvenile court proceedings; or

7 (2) The child has a record of violent conduct resulting in physical injury to self or others;

8 or

9 (3) The child has a record of leaving a court-ordered placement, other than secure
10 detention, without permission.

11 2. As used in this section, the following terms mean:

12 (1) "Secure detention", any public or private residential facility used for the temporary
13 placement of any child if such facility includes construction fixtures designed to physically
14 restrict the movements and activities of children held in the lawful custody of such facility;

15 (2) "Valid court order", an order issued by a court of competent jurisdiction regarding
16 a child who has been brought before the court, which sets forth specific conditions of behavior
17 for the child and consequences of violations of such conditions.

18 3. This section shall not apply:

19 (1) To a child who has been taken under the jurisdiction of the court pursuant to
20 subdivision (3) of subsection 1 of section 211.031; or

21 (2) To a child who was adjudicated pursuant to subdivision (3) of subsection 1 of section
22 211.031 after being taken under the jurisdiction of the court; or

23 (3) To a child who is currently charged with a violation under subdivision (3) of
24 subsection 1 of section 211.031.

**211.065. 1. Notwithstanding any other provision of law, any juvenile who is taken
2 into custody for prostitution under section 567.020 or for committing any sexual offense,
3 or for being a runaway when such juvenile has previously been adjudicated as being a
4 runaway on two or more occasions, shall be placed in detention and may be held in
5 detention for a period not to exceed forty-eight hours during which time the juvenile officer
6 shall cause an evaluation to be made to determine whether the offense committed by the
7 juvenile was the proximate result of enticement, exploitation, or coercion by a third party.
8 The juvenile officer shall immediately file a notice of detention under this section with the
9 court.**

10 **2. If the juvenile officer determines that the offense was not the proximate result
11 of enticement, exploitation, or coercion by a third party, the juvenile officer shall, within
12 the forty-eight-hour time period, file a report with the court detailing that there was no
13 third-party involvement. Upon receipt of such a report the court shall immediately order
14 that a detention hearing be held within twenty-four hours of receipt of the report. If such
15 hearing is not held within one day, excluding Saturdays, Sundays and legal holidays, the
16 juvenile shall be released from detention unless the court for good cause orders the hearing
17 continued. The detention hearing shall be held within the judicial circuit at a date, time
18 and place convenient to the court. Notice of the date, time and place of a detention hearing,
19 and of the right to counsel, shall be given to the juvenile and his or her custodian in person,
20 by telephone, or by such other expeditious method as is available.**

21 **3. If the juvenile officer determines that the offense was the proximate result of
22 enticement, exploitation, or coercion by a third-party the juvenile officer shall, within the
23 forty-eight- hour time period, file a report with the court detailing the third-party
24 involvement. Upon receipt of such a report the court shall immediately order that the
25 juvenile be released from detention and transferred into the temporary legal custody of the
26 division of family services for a protective custody placement. The juvenile shall not be
27 returned to the legal or physical custody of the person or persons who had such custody
28 prior to the juvenile being taken into custody without a court order. In addition the
29 juvenile officer shall immediately notify the law enforcement agency where the offense**

30 occurred of his or her determination that such offense was the result of enticement,
31 exploitation, or coercion by a third party.

32 4. If the court fails to receive a report from the juvenile officer within forty-eight
33 hours of notice of the detention of the juvenile under this section, the court shall
34 immediately order that a detention hearing be held within twenty-four hours. If such
35 hearing is not held within one day, excluding Saturdays, Sundays and legal holidays, the
36 juvenile shall be released from detention unless the court for good cause orders the hearing
37 continued. The detention hearing shall be held within the judicial circuit at a date, time
38 and place convenient to the court. Notice of the date, time and place of a detention hearing,
39 and of the right to counsel, shall be given to the juvenile and his or her custodian in person,
40 by telephone, or by such other expeditious method as is available.

41 5. Once the juvenile officer has made a determination that there was third-party
42 enticement, exploitation, or coercion, law enforcement officers investigating the allegation
43 of third-party involvement shall, at their request, be allowed unhindered access to question
44 the juvenile as a victim of enticement, exploitation or coercion. No information obtained
45 from an interview of the juvenile as a victim of enticement, exploitation, or coercion which
46 incriminates the juvenile in the commission of the offenses for which such juvenile was
47 taken into custody shall be used in the prosecution of such juvenile.

48 6. The juvenile shall be advised prior to questioning:

49 (1) That the questioner is interviewing the juvenile in an attempt to determine if a
50 third party is responsible for enticing, exploiting, or coercing the juvenile into committing
51 the offenses for which the juvenile was detained; and

52 (2) That any statement the juvenile does make to anyone or any information or
53 evidence the juvenile provides to anyone during this questioning can not be and may not
54 be used against him or her in juvenile court or in a court of general jurisdiction; and

55 (3) That the juvenile has a right to have a parent, guardian or custodian present
56 during questioning; and

57 (4) That the juvenile has a right to consult with an attorney and that one will be
58 appointed and paid for him or her if he or she cannot afford one.

59 7. If the juvenile indicates in any manner and at any stage of questioning under this
60 section that he or she does not wish to be questioned further, the officer shall cease
61 questioning.

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